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August 23, 2000

Magalie Roman Salas,
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CC Docket No. 98-141, ASD File No. 99-49

Dear Ms. Salas:

On August 22 and 23, representatives of AT&T Corporation ("AT&T") conferred by telephone with (1) Sarah E. Whitesell and Deena Shetler of Commissioner Tristani's office, (2) Anthony J. Dale, Katherine Farroba, and Johanna Mikes of the Common Carrier Bureau, and (3) Anna Gomez of Chairman Kennard's office. AT&T was represented in these conversations by Richard H. Rubin, C. Michael Pfau, Joan M. Marsh (first two conversations only), Robert W. Quinn, Jr. (third conversation only), and the undersigned. The conversations focused on SBC's pending request for interpretation, modification, or waiver of conditions associated with the FCC's approval of the SBC/Ameritech merger.

AT&T's presentations reviewed various points reflected in comments, reply comments and ex parte presentations previously filed on the record in this proceeding, including the threshold position that the ADLU cards and OCDs are properly owned by SBC's incumbent local exchange carriers ("ILECs") rather than SBC's advanced services affiliate, ASI. Additional comments were directed at the "proposed commitments" submitted by SBC on August 2. In that context, AT&T's representatives made the following points:

The Telecommunications Act of 1996 was intended to create a *national* policy framework. Companies like AT&T need to be able to make *national* plans. Yet as a consequence of several merger proceedings, the Commission has developed merger conditions that apply to some ILECs but not others. Moreover, rules are drafted by the Commission, but merger conditions (or, in this case, "commitments" to accompany conditions) tend to be drafted by the ILEC, and they contain numerous ambiguities and potential loopholes whose anticompetitive consequences may not be fully appreciated until after the fact, when competitive local exchange carriers ("CLECs") actually try to negotiate to implement these commitments in interconnection agreements and compete for customers.

As a result, it is imperative that any new merger conditions specifically state that they are subject to, and do not relieve SBC from, all of the obligations applicable to ILECs generally and to Bell companies in particular under the Act, including but not limited to, Sections 251, 252, 271, 272, and 201. In addition, any order adopting new commitments should expressly state (1) that some of these issues are being addressed in a pending FNPRM; (2) that nothing in the commitments should be viewed as a ruling on the merits of those issues; and (3) SBC will be held to full and immediate compliance with the general rules when they are adopted.

AT&T's representatives also urged Commission staff to recognize and acknowledge the inherent advantages of SBC's affiliate, ASI, resulting from the manner in which Project Pronto was developed and deployed, and to take every measure possible to prevent such advantages from being compounded on a going forward basis. The Telecommunications Act of 1996 was intended to provide CLECs with nondiscriminatory access to the elements of ILEC networks, and the principle of nondiscrimination is at the heart of Sections 251(c) and 272 in particular. Nevertheless, SBC's implementation of Project Pronto is not consistent with this critical principle.

Project Pronto was designed on a unitary basis to meet SBC's own needs (including, now, the goals of ASI), and not the needs of nonaffiliates. This includes not only the Project Pronto remote terminal ("RT") architecture, which was designed solely to meet ASI's service needs and volume projections, but also the associated operations systems support ("OSS") processes, which were specifically designed to work between SBC ILECs and ASI to meet only the identified needs of ASI. ASI has developed specific expertise regarding those OSS that CLECs cannot currently or promptly match.

To some extent, because SBC's deployment of Project Pronto is ahead of other ILECs' plans, the inherent advantages of ASI cannot be completely eliminated (e.g., the acknowledged lack of space in the first round of Project Pronto RTs).[1] This situation, of course, must not be permitted to arise in the future with SBC or any other ILEC. Furthermore, on a going forward basis, it is essential that SBC's ILECs – and all other ILECs – be required to act in a truly nondiscriminatory manner with respect to both the planning and implementation of new network architecture and support processes. Fundamental to satisfying such a mandate is that each ILEC do everything it can to accommodate the needs of CLECs with the same openness, priority, promptness, quality and completeness it addresses its own affiliates' requests and in a manner consistent with the guidance the Commission previously gave in the Non-Accounting Safeguards

[1] AT&T's representatives made clear that, by focusing on going forward issues, they were not in any way endorsing SBC's contention that the merger conditions, as originally promulgated, authorized preferential collocation rights for ASI during the 180 days after ASI was established.

Order.[2] Simply stated, CLECs must not be second class customers compared to the ILEC's data affiliate.

SBC's commitments acknowledge that its role is to act as a wholesale provider to all advanced service providers. In that context, true nondiscrimination requires that SBC's ILECs act in a manner that maximizes their entire wholesaling business, not just the interests of ASI. Thus, CLECs should not be limited exclusively to functionalities that have been requested by and made available to ASI (and were specifically designed to be uniquely beneficial to ASI). CLECs are also entitled to have their own unique needs considered and met on an equivalent basis. Accordingly, AT&T's representatives urged that the Commission clearly state that deployment of next-generation networks must proceed in a manner that acknowledges this principle and increase ILECs' awareness of their obligation to meet CLECs' needs in this area. AT&T further urged that the Commission reaffirm its prohibitions on discrimination by ILECs (under Section 251(c)) and Bell companies (under Section 272), and expressly state that compliance with merger conditions and commitments does not absolve SBC of any of its obligations under the Act, especially with respect to its relationship with ASI.

The conversations also encompassed specific (although not exhaustive) comments on particular commitments proposed by SBC:

- Commitments 2 and 3 are described as "wholesale services," rather than combinations of network elements ("UNEs"). The difference between the two categorizations is potentially very significant under the Act. The Commission should clarify that what SBC has described is in fact a voluntary combination of UNEs. The Commission should also clearly state that, consistent with the requirements of Section 272, CLECs are entitled to obtain other technically feasible combinations of UNEs that are reasonably similar to the combination provided to ASI. In addition, the Commission should clarify that other CLECs may use such combinations to offer any technically feasible service of their choosing, regardless of whether ASI utilizes a particular feature or functionality. Such a clarification will better assure that the commitments are interpreted consistently with the plain nondiscrimination requirements of 251(c)(3) and 272.

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[2] In the Non-Accounting Safeguards Order (¶ 197), the Commission read section 272(c)(1) as "establishing an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities." The Commission specifically stressed (¶ 208) that section 272 prohibits discrimination in the establishment of standards, such as a network interface "that favors its section 272 affiliate and disadvantages an unaffiliated entity." The Commission further determined (¶ 210) that the nondiscrimination requirement "extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate" and ruled that, "to the extent a BOC develops new services for or with its section 272 affiliate, it must develop new services for or with unaffiliated entities in the same manner."

- Commitment 3 purports to make it easier for a CLEC to obtain what it needs to offer voice and data over a single "line." However, the last sentence of the first paragraph of this commitment could be read to require that a CLEC must be collocated "in the SBC/Ameritech incumbent LEC's serving central office" to utilize *either* the voice or the data capabilities to provide service.[3] Although collocation should always be an option when utilizing the described UNE combination, there is no basis to impose such a requirement in all cases. The voice path can easily and directly be cross-connected to the unbundled local switching element (as it is in the service that SBC's ILECs offer and its affiliate "joint markets"). Alternatively, the voice path could be routed, using an EELs type configuration, to a CLEC collocation in another central office. Similarly, the OCD port could easily be cross-connected to unbundled dedicated transport in an EELs-like configuration. Such technically feasible options should not be foreclosed simply because they are not in ASI's business plans or because of the manner in which the commitment was worded. A CLEC should not be compelled to incur the delay and expense of collocating in an SBC central office for the sole purpose of cross-connecting two UNEs obtained from the ILEC. In addition, the proposed clarification permits UNE-P carriers to pursue their chosen strategies for market entry and permits voice CLECs and data CLECs to operate on more equal footing with SBC ILECs and ASI. Accordingly, references to collocation, and especially to collocation in "the serving central office," should be eliminated.

- Commitments 2 and 3 provide no information on price structure, specific rates, or other ordering terms and conditions. Nevertheless, most, or even all, of the pro-competitive benefits of offering such a combination could be rendered moot by future SBC actions with respect to pricing and ordering (as well as other operational details). The Commission should make clear that SBC must not incorporate requirements (e.g., capacity minimums, minimum purchase requirements) or pricing structures that are uniquely beneficial to ASI when it operationalizes these commitments in binding tariffs and interconnection agreements.

- Commitment 5 reposes excessive discretion in the hands of SBC regarding the disposition of requests for the provision of additional space in or adjacent to RTs. No firm dates are provided for SBC to provide firm answers to such requests or to implement such requests in cases where SBC has decided to respond affirmatively.

- Commitment 7 refers to "mainframe terminated copper," a term that is not standard in industry usage. This term should be clarified, presumably to refer to continuous copper pathways having generally recognized operational parameters and connecting a retail customer premises to the ILEC serving central office. Furthermore, commitment 7 provides that SBC may retire up to 5% of its copper over the next three years but should be clarified so that the 5% is cumulative for the full three-year period (as opposed to a per-year

[3] An apparent prerequisite of central office collocation is also a feature of proposed Commitment 2.

allowance) and to foreclose SBC from concentrating the withdrawal of disproportionate amounts in particular geographic regions (especially where affiliated and unaffiliated carriers are affected unequally).

- Commitment 8(a) promises SBC will consider CLEC-specific requests, but does not fully require that SBC be as cooperative and timely, and that it operate with equivalent priority, in meeting the needs of nonaffiliates as in meeting needs of affiliates. A mechanism is required to assure that there is oversight of the process and a time-bound dispute resolution process available to the CLECs.

- Commitment 8 also relies too heavily on the prospects for "industry collaborative sessions." In the judgment of AT&T -- and virtually every other CLEC that participated -- SBC did not fulfill the requirements previously imposed regarding the development of an Advanced Services Plan of Record. The Commission should review the problems associated with the prior collaboratives with a view to ensuring that the same kinds of problems do not recur this time.

- All commitments need to be subject to full 251 requirements (OSS, TELRIC pricing, no sunset), processes (state arbitration of disputes regarding interconnection agreements), and enforcement (including 271 consequences).

- Commitments that are necessitated by the Act or by the Commission's orders, as many of those proposed by SBC are, should not "sunset" when SBC is no longer subject to the separate affiliate requirement.

In accordance with Section 1.106 of the Commission's rules, and original and one copy of this letter are provided for inclusion in the public record associated with CC Docket No. 98-141.

Sincerely,

James L. Casserly

Cc: Sarah E. Whitesell
Deena Shetler
Anthony J. Dale
Katherine Farroba
Johanna Mikes
Anna Gomez